

REMARKS

Claims 1 - 7 remain active in this application. No amendment of the application is currently requested and no new matter has been introduced into the application.

Claims 1 - 7 have again been rejected under 35 U.S.C. §103 as being unpatentable over Toba in view of Colonna et al. for the reasons stated in the action of November 16, 2004; the Examiner additionally indicating that Toba is considered to answer the amendatory language of claim 1 submitted January 7, 2005. This sole ground of rejection is respectfully traversed.

It is respectfully submitted that even if, *arguendo*, Toba answers the amendatory language of claim 1, the Examiner's assertion in that regard is not at all probative of the propriety of the asserted ground of rejection since, as pointed out in the previous response, Toba and Colonna et al. taken singly or in combination, do not answer the claimed subject matter. The amendment of a claim carries no inference or admission whatsoever of the propriety of any aspect of a rejection or objection and it is not uncommon to include amendatory recitations in regard to the environment of the invention or the cooperation of the invention therewith in order to avoid or emphasize the error in an incorrect construction of the claim language in regard to the invention. In fact, the amendatory reference to a function of the "main controller" (as distinct from the separately recited "controller") was included in the previous response for the purpose of emphasizing that, in accordance with the invention, as claimed, the "controller" and the "main controller" are separate and distinct elements having separate and distinct functions while functions the Examiner suggests to be in some way comparable are performed by a *single element* in both Toba (control

circuit 12) and Colonna et al. (controller 106). This controller element of both Toba and Colonna et al. also performs numerous and complex other functions in the context of a portable telephone, many of which are programmed or performed by special purpose processing circuitry. However, provision of a "controller" separate and distinct from the "main controller, as claimed, allows the meritorious function of switching between modes of notification of an incoming call in a completely transparent and natural manner which does not require conscious action on the part of the user to be provided without any specialized programming or (main) controller circuit addition or modification and does not contribute to the processing overhead of the "main controller" at the time of processing an incoming call, as discussed in detail in the previous response.

Moreover, provision of a separate controller for controlling the mode of notification also avoids the consumption of power for processing to switch between notification modes and allows a degree of simplification of the "main controller" since the "main controller provides a single output signal upon receipt of an incoming call regardless of whether a sounder or a vibrator is ultimately activated. In other words, the invention, as claimed, provides for a main controller 20 to output a signal indicating reception of a call and that signal is provided to a controller 16 which, independently of the main controller 20, effectively causes the signal to be branched to either a sounder (and its drive circuit) or a vibrator (and its drive circuit), as illustrated in Figure 2, in accordance with a state of a two position switch indicating whether the portable telephone is in a folded or unfolded position. No comparable architecture or methodology is taught or suggested by either of the references relied upon by the Examiner and the references provide no evidence of a level of

ordinary skill in the art which would support a conclusion of obviousness of such an architecture, even if the prior art relied upon supported the function of switching between incoming call notification modes responsive to the folded or unfolded state of the portable telephone (which it does not for the reasons detailed in the remarks appended to the previous response). Thus, the combination of references does not answer the subject matter of any claim considered as a whole and a *prima facie* demonstration of obviousness of the subject matter of any claim based on Toba and Colonna et al. has not been made and, it is respectfully submitted, cannot be made. The invention is not merely an alternative function controlled through a main controller in response to the folded or unfolded state of a portable telephone, but a different architecture and methodology altogether which has novel and unexpected meritorious effects in the particular application claimed such as the avoidance of any need for processing (and corresponding power consumption) other than at the time of an incoming call (while the mode may be changed many times by folding and unfolding the portable phone between incoming calls) and the control of notification mode in a completely natural manner without conscious effort to do so on the part of the user. None of these advantages are remotely addressed, much less achieved, by the prior art relied upon. Therefore, the prior art relied upon cannot lead to an expectation of success in achievement of such advantages by providing the architecture and methodology explicitly recited in the claims.

Accordingly, it is clearly seen that the sole ground of rejection contained in the present office action is in error and untenable. No *prima facie* demonstration of obviousness of the subject matter of any claim has been made. The Examiner *assumes* the propriety of the previously stated ground of rejection

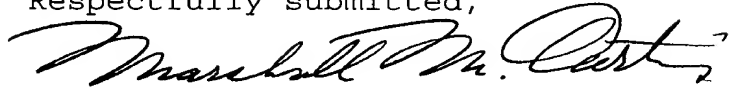
and addresses only the amendatory matter, thus failing to consider the claimed subject matter as a whole and further failing to make a *prima facie* demonstration of obviousness of any claim. Neither of the references relied upon remotely addresses the control of incoming call notification mode responsive to folded or unfolded state of a portable telephone to be appropriate to the way the portable telephone is being used at any given time (e.g. to use the vibrator when the portable telephone is folded and thus likely to be located in a pocket or other location from which sound propagation may be compromised or where vibration is more likely to be perceived than sound); Toba merely changing the mode of display of *missed* calls and Colonna et al. changing the operational mode of the portable telephone between stand-by, private and speaker-phone modes - *both* under control of a "main controller" responsive to relative positions of housing portions and not under control of a controller separate and distinct from such a main controller. Therefore, reconsideration and withdrawal of the ground of rejection based on Toba and Colonna et al. are clearly in order and such action is respectfully requested.

Since all rejections, objections and requirements contained in the outstanding official action have been fully answered and shown to be in error and/or inapplicable to the present claims, it is respectfully submitted that reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b) and such reconsideration is respectfully requested. Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance and such action is therefore respectfully requested.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and

credit any overpayment of fees to Attorney's Deposit
Account No. 50-2041.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marshall M. Curtis", written in dark ink.

Marshall M. Curtis
Reg. No. 33,138

Whitham, Curtis & Christofferson, P. C.
11491 Sunset Hills Road, Suite 340
Reston, Virginia 20190

(703) 787-9400
Customer Number: 30743